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9 ATTORNEYS FOR
10 Plaintiff Richard MARTIN

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD MARTIN, an individual,
Plaintiff,

v.
BALL CORPORATION, an Indiana
Corporation; BALL METAL BEVERAGE
CONTAINER CORP., a Colorado
Corporation; and DOES 1 through 20,
inclusive.

Defendant.

Case No: 2:21-cv-01049-DAD-CKD
Dist. Judge Hon. Dale A. Drozd

**THIRD AMENDED COMPLAINT FOR
DAMAGES**

- (1) **DISABILITY DISCRIMINATION
(FEHA)**
- (2) **FAILURE TO PROVIDE
REASONABLE
ACCOMMODATIONS (FEHA)**
- (3) **DISABILITY RETALIATION
(FEHA)**
- (4) **FAILURE TO ENGAGE IN A
TIMELY GOOD-FAITH
INTERACTIVE PROCESS (FEHA)**
- (5) **CFRA RETALIATION**
- (6) **FMLA RETALIATION**
- (7) **SICK-LEAVE
RETALIATION/UNLAWFUL
POLICY (LAB. CODE § 246 ET SEQ.)**
- (8) **TAMENY**
- (9) **UCL — § 17200**

**JURY TRIAL DEMANDED ON ALL
COUNTS**

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2 **Plaintiff Richard Martin, demanding a jury trial on all counts, alleges:**

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JURISDICTION & VENUE

4 1. **Plaintiff Richard Martin**, at the time of the filing of this action, was a resident,
5 domiciliary, and citizen of California, with his primary place of residence in Solano County.

6 2. **Defendant BALL Corporation** is a corporation organized under the laws of the
7 State of Indiana, with its principal place of business identified in state filings as 9200 W. 108th
8 Circle Westminster, Colorado 80021.

9 3. **Defendant BALL Metal Beverage Container Corporation** is a corporation
10 organized under the laws of the State of Colorado, with its principal place of business identified in
11 state filings as 9200 W. 108th Circle Westminster, Colorado 80021.

12 4. **Defendant BALL Corporation & Defendant BALL Metal Beverage Container
13 Corporation** are referred to collectively as “**Defendants BALL**.”

14 5. The BALL Defendants operate an industrial plant in Solano County, at 2400
15 Huntington Dr, Fairfield, CA 94533.

16 6. Plaintiff has, within the time prescribed by law, obtained a “right-to-sue” letter from
17 the California Department of Fair Employment and Housing; a copy of which letter is attached
18 hereto as Exhibit “A”.

19 7. Plaintiff does not know the true names of Defendants Does 1 through 20, inclusive,
20 and therefore sues them by those fictitious names. Plaintiff is informed and believes, and on the
21 basis of that information and belief, herein alleges, that each of those Defendants was in some
22 manner legally responsible for the events and happenings alleged in this Complaint and for
23 Plaintiff’s damages. The names, capacities, and relationships of Does 1 through 20, will be alleged
24 by amendment to this Complaint when they are known.

25 8. Plaintiff is informed and believes, and based thereon alleges, that at all times men-
26 tioned herein, Defendant Does 1 through 20, inclusive, and each of them, were the agents and/or
27 employees of each of the remaining Defendants, and each of them, in doing the acts alleged in this

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1 Complaint, were acting within the purpose and scope of said agency and employment.

2 9. Each Defendant is sued individually and as an agent, conspirator, aider and abettor,
3 investor, manager, unit-holder, employee and/or control-person for each of the other Defendants,
4 and the liability of each Defendant arises from the fact that each has engaged in all or part of the
5 unlawful acts, plans, schemes, or wrongs complained of herein and was acting within the course
6 and scope of said agency, partnership, conspiracy, and employment.

7 10. Plaintiff does not know the entity that employed him, and sued the Ball Defendants
8 under subdivision (c) of section 379 of the *Code of Civil Procedure*, which provides that “[w]here
9 the plaintiff is in doubt as to the person from whom he or she is entitled to redress, he or she may
10 join two or more defendants, with the intent that the question as to which, if any, of the defendants
11 is liable, and to what extent, may be determined between the parties.”

GENERAL ALLEGATIONS

14 11. Plaintiff MARTIN was employed by Defendants BALL as a machinist in BALL's
15 Fairfield Plant, which manufactures cans of the type used to package canned soup, vegetables, and
16 similar products.

17 12. On November 6, 2018, MARTIN was injured at work while lowering a hopper of
18 manufactured cans.

19 13. MARTIN reported that he was injured to a supervisor; the supervisor gave MARTIN
20 ibuprofen and sent him back to work.

21 14. Every day for the following four days, MARTIN reported to his supervisors that he
22 was injured; yet, each day, MARTIN was sent back to work.

23 15. Finally, MARTIN advised Defendants BALL that unless he was provided medical
24 assistance he would leave work and work it out himself.

25 16. Only AFTER MARTIN made this ultimatum, MARTIN'S supervisors sent him to
26 meet with a Human Resources representative who took MARTIN to a hospital where he was
27 diagnosed with a pulled muscle behind his rotator cuff.

1 17. The hospital gave MARTIN a shot, muscle relaxants, and pain medications, and set
 2 him up with an appointment with a Workers Compensation doctor.

3 18. The doctor told MARTIN he could return to work on light duty. His work
 4 restrictions included no heavy lifting or pulling.

5 19. Defendants BALL switched MARTIN to a light-duty position, but in this position,
 6 he was not given any overtime work.

7 20. MARTIN had accumulated over 400 hours of overtime in the preceding months, and
 8 MARTIN was retaliated against by being denied overtime.

9 21. MARTIN was also required to change from his previous night shift to a day shift,
 10 without being provided any reasonable accommodation in the form of being provided time to seek
 11 and obtain childcare during those different work hours; in violation of Labor Code section 230.8.

12 22. On November 20, 2018, MARTIN went, to a scheduled doctor's appointment with
 13 his Worker's Compensation doctor.

14 23. MARTIN returned from the doctor's appointment at 11:00 a.m. and advised his
 15 supervisor that he was ready to work his regular 6 p.m. to 6 a.m. shift. The supervisor advised
 16 Martin that he would not be allowed to work at 6:00 p.m., because the company required at least 8
 17 hours between shifts.

18 24. The supervisor advised MARTIN that, due to the fact that he had gone to a Worker's
 19 Compensation on company time, he would not be allowed to begin his shift until 8 p.m., and he
 20 would be docked one "point", pursuant to the company's policy of: Docking one point for missing
 21 the first hour in a shift; and docking two points for time missed in excess of 1.1 hours.

22 25. MARTIN had offered to come at 8 p.m. until 8 a.m. to avoid being docked any
 23 points. That offer was refused. MARTIN was advised that, no matter what, he would be docked
 24 one point because his Worker's Compensation doctor's visit would delay his next shift.

25 26. MARTIN had been advised that EXCEEDING 10 points was grounds for
 26 termination.

27 27. Because November 28, 2018 was MARTIN'S work anniversary, and would reset the
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1 "points" to zero, MARTIN asked whether taking off the entire shift---which would result in two
 2 points---would be grounds for termination.

3 28. MARTIN'S supervisor consulted with the workplace policy manual, in front of
 4 Martin, and then assured Martin that only EXCEEDING 10 points---i.e. accruing eleven points---
 5 was grounds for termination. Relying on this assurance, MARTIN took the remainder of his shift
 6 off.

7 29. MARTIN returned to work the next shift, and worked the remainder of the work
 8 week, November 21 through November 23, without incident.

9 30. On November 27, 2018, MARTIN returned to work, and he was called into the office
 10 by his production manager, Brager, and a Human Resources Representative.

11 31. Brager and the Human Resources Representative informed Martin that he was being
 12 suspended without pay, pending an investigation.

13 32. MARTIN was not informed what matter was being investigated. Since Mr.
 14 MARTIN had been working for Defendants BALL for exactly one year at this point, he was due
 15 for a \$1.00 per hour pay raise.

16 33. Defendants BALL took retaliatory action against MARTIN due to his engaging in
 17 protected activity by seeking disability accommodations.

18 34. Alternatively, Defendants BALL suspended and terminated MARTIN because,
 19 knowing that he had been injured, and that, on his work anniversary, his FMLA/CFRA rights would
 20 accrue, Defendants BALL suspended and terminated MARTIN so as to avoid FMLA/CFRA
 21 obligations.

22 35. On December 8, 2018, Brager called MARTIN and informed him that he was being
 23 terminated because of his attendance points. Clearly, MARTIN was terminated in retaliation for
 24 having sought an accommodation for a temporary disability.

25 36. As a result, Martin's termination was wrongful in violation of California's Public
 26 Policy.

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FIRST CAUSE OF ACTION

Disability Discrimination (FEHA)

SECOND CAUSE OF ACTION

Failure to Provide Reasonable Accommodations (FEHA)

By Plaintiff MARTIN against Defendants BALL

and Does 1 through 20, Inclusive

37. Plaintiff MARTIN herein incorporates paragraphs 1 through the instant paragraph.

38. Defendants BALL, and Does 1 through 20, inclusive, employed more than 500 employees within California.

10 39. Plaintiff MARTIN was an employee of Defendants BALL and Does 1 through 20,
11 inclusive.

12 40. Defendants BALL, and Does 1 through 20, inclusive, knew that Plaintiff MARTIN
13 had a torn rotator cuff, constituting a musculoskeletal physical disability and/or other disability
14 under 2 C.C.R. § 11065(d), and which limited, amongst other limitations, the major life activities
15 of “performing manual tasks,” “reaching,” “lifting,” “bending,” and the “operation of . . .
16 musculoskeletal . . . functions.” 2 C.C.R. § 11065(l).

17 41. Defendants BALL, and Does 1 through 20, inclusive, perceived Plaintiff MARTIN
18 as having a musculoskeletal physical disability and/or other disability under 2 C.C.R. § 11065(d),
19 and which limited, amongst other limitations, the major life activities of “performing manual tasks,”
20 “reaching,” “lifting,” “bending,” and the “operation of . . . musculoskeletal . . . functions.” 2 C.C.R.
21 § 11065(l).

22 42. Plaintiff MARTIN was able to perform all essential job duties, either with
23 reasonable accommodations, such as "job restructuring," "modified work schedule," "unpaid
24 leave," and/or other reasonable accommodations, 2 C.C.R. § 11065(p); *id.* § 11068(c); and/or
25 Plaintiff MARTIN was able to perform all essential job duties without reasonable accommodation.

26 43. Defendants BALL, and Does 1 through 20, inclusive, discharged Plaintiff and/or
27 subjected Plaintiff to adverse employment action and/or refused to provide Plaintiff with reasonable

1 accommodations, including, without limitation, refused to provide Plaintiff with the reasonable
2 accommodations of being able to visit a doctor and obtain medical care.

3 44. Plaintiff MARTIN was harmed by such conduct by Defendants BALL, and Does 1
4 through 20, inclusive.

5 45. The conduct of Defendants BALL, and Does 1 through 20, inclusive, were a
6 substantial factor in causing MARTIN's harm.

7 46. Plaintiff MARTIN has been harmed in an amount to be proven at trial, in an amount
8 no less than \$250,000.

9 47. Said conduct by Defendants, and Does 1 through 20, and each of them, was
10 intentional and despicable, and perpetrated with willful and conscious disregard for Plaintiff's
11 rights. The described conduct was done with malice, oppression, and/or fraud, in a manner that
12 renders Defendants, and Does 1 through 20, and each of them, liable for punitive damages in such
13 sum that shall be determined at the time of trial.

14 **THIRD CAUSE OF ACTION**

15 **Disability Retaliation (FEHA)**

16 **By Plaintiff MARTIN against Defendants BALL**

17 **and Does 1 through 20, Inclusive**

18 48. Plaintiff MARTIN herein incorporates paragraphs 1 through the instant paragraph

19 49. Defendants BALL, and Does 1 through 20, inclusive, employed more than 5
20 employees within California.

21 50. Plaintiff MARTIN was an employee of Defendants BALL and Does 1 through 20,
22 inclusive.

23 51. Plaintiff MARTIN engaged in the protected activity of requesting disability
24 accommodations, including, without limitation, requesting the disability accommodation of leave
25 from work to obtain medical treatment necessary for treating MARTIN's disability.

26 52. Plaintiff MARTIN was discharged and/or subjected to an adverse employment
27 action.

1 53. Plaintiff MARTIN's protected activity in requesting disability accommodations,
2 including, without limitation, requesting the disability accommodation of leave from work to obtain
3 medical treatment necessary for treating MARTIN's disability, were a substantial motivating reason
4 for the decision by Defendants BALL, and Does 1 through 20, inclusive, to discharge Plaintiff
5 MARTIN.

6 54. Defendants BALL, and Does 1 through 20, inclusive, knew that Plaintiff MARTIN
7 had a torn rotator cuff, constituting a musculoskeletal physical disability and/or other disability
8 under 2 C.C.R. § 11065(d), and which limited, amongst other limitations, the major life activities
9 of "performing manual tasks," "reaching," "lifting," "bending," and the "operation of . . .
10 musculoskeletal . . . functions." 2 C.C.R. § 11065(l).

11 55. Defendants BALL, and Does 1 through 20, inclusive, perceived Plaintiff MARTIN
12 as having a musculoskeletal physical disability and/or other disability under 2 C.C.R. § 11065(d),
13 and which limited, amongst other limitations, the major life activities of "performing manual tasks,"
14 "reaching," "lifting," "bending," and the "operation of . . . musculoskeletal . . . functions." 2 C.C.R.
15 § 11065(l).

16 56. Plaintiff MARTIN was discharged and/or subjected to an adverse employment
17 action because he was disabled and/or because Defendants BALL, and Does 1 through 20,
18 inclusive, perceived Plaintiff MARTIN as being disabled.

19 57. Plaintiff MARTIN was harmed by such conduct by Defendants BALL, and Does 1
20 through 20, inclusive.

21 58. The conduct of Defendants BALL, and Does 1 through 20, inclusive, were a
22 substantial factor in causing MARTIN's harm.

23 59. Plaintiff MARTIN has been harmed in an amount to be proven at trial, in an amount
24 no less than \$250,000.

25 60. Said conduct by Defendants, and Does 1 through 20, and each of them, was
26 intentional and despicable, and perpetrated with willful and conscious disregard for Plaintiff's
27 rights. The described conduct was done with malice, oppression, and/or fraud, in a manner that
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1 renders Defendants, and Does 1 through 20, and each of them, liable for punitive damages in such
2 sum that shall be determined at the time of trial.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Engage in Timely Good-Faith Interactive Process (FEHA)**

5 **By Plaintiff MARTIN against Defendants BALL**

6 **and Does 1 through 20, Inclusive**

7 61. Plaintiff MARTIN herein incorporates paragraphs 1 through the instant paragraph.

8 62. Defendants BALL, and Does 1 through 20, inclusive, employed more than 5
9 employees within California.

10 63. Plaintiff MARTIN was an employee of Defendants BALL and Does 1 through 20,
11 inclusive.

12 64. Defendants BALL, and Does 1 through 20, inclusive, knew that Plaintiff MARTIN
13 had a torn rotator cuff, constituting a musculoskeletal physical disability and/or other disability
14 under 2 C.C.R. § 11065(d), and which limited, amongst other limitations, the major life activities
15 of “performing manual tasks,” “reaching,” “lifting,” “bending,” and the “operation of . . .
16 musculoskeletal . . . functions.” 2 C.C.R. § 11065(l).

17 65. Defendants BALL, and Does 1 through 20, inclusive, perceived Plaintiff MARTIN
18 as having a musculoskeletal physical disability and/or other disability under 2 C.C.R. § 11065(d),
19 and which limited, amongst other limitations, the major life activities of “performing manual tasks,”
20 “reaching,” “lifting,” “bending,” and the “operation of . . . musculoskeletal . . . functions.” 2 C.C.R.
21 § 11065(l).

22 66. Plaintiff MARTIN was willing to participate in an interactive process to determine
23 whether reasonable accommodation could be made so that he would be able to perform the essential
24 job requirements.

25 67. Defendants BALL, and Does 1 through 20, inclusive, failed to participate in a timely
26 good-faith interactive process with Plaintiff MARTIN to determine whether reasonable
27 accommodation could be made.

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1 68. Plaintiff MARTIN was harmed by such conduct by Defendants BALL, and Does 1
2 through 20, inclusive.

3 69. The conduct of Defendants BALL, and Does 1 through 20, inclusive, were a
4 substantial factor in causing MARTIN's harm.

5 70. Plaintiff MARTIN has been harmed in an amount to be proven at trial, in an amount
6 no less than \$250,000.

7 71. Said conduct by Defendants, and Does 1 through 20, and each of them, was
8 intentional and despicable, and perpetrated with willful and conscious disregard for Plaintiff's
9 rights. The described conduct was done with malice, oppression, and/or fraud, in a manner that
10 renders Defendants, and Does 1 through 20, and each of them, liable for punitive damages in such
11 sum that shall be determined at the time of trial.

FIFTH & SIXTH CAUSE OF ACTION

CFRA/FMLA Retaliation

By Plaintiff MARTIN against Defendants BALL

and Does 1 through 20, Inclusive

16 72. Plaintiff MARTIN herein incorporates paragraphs 1 through the instant paragraph.

17 73. Defendants BALL, and Does 1 through 20, inclusive, employed more than 50
18 employees within California.

19 74. Plaintiff MARTIN was an employee of Defendants BALL and Does 1 through 20,
20 inclusive.

21 75. On no later than November 28, 2018, Plaintiff MARTIN became eligible to no less
22 than 12 weeks job-protected leave.

23 76. Defendants BALL, and Does 1 through 20, inclusive, knew that Plaintiff MARTIN
24 had a torn rotator cuff, constituting a musculoskeletal physical disability and/or other disability
25 under 2 C.C.R. § 11065(d), and which limited, amongst other limitations, the major life activities
26 of “performing manual tasks,” “reaching,” “lifting,” “bending,” and the “operation of . . .
27 musculoskeletal . . . functions.” 2 C.C.R. § 11065(l).

1 77. Defendants BALL, and Does 1 through 20, believed that Plaintiff MARTIN, being
 2 injured, would potentially seek to take CFRA leave, and, for such reason, Defendants BALL, and
 3 Does 1 through 20, terminated Plaintiff MARTIN without providing him reasonable
 4 accommodations and/or without providing him a reasonable opportunity to challenge his
 5 termination and/or through misrepresenting its point policy, so as to preclude MARTIN's ability to
 6 take protected leave.

7 78. The belief by Defendants BALL, and Does 1 through 20, that Plaintiff MARTIN
 8 was likely to seek CFRA leave was a substantial motivating reason for Plaintiff MARTIN being
 9 discharged and/or subjected to an adverse employment action.

10 79. Plaintiff MARTIN, in fact, made a request for FMLA leave, only to be told he was
 11 not eligible; and, thereafter, Plaintiff MARTIN was fired before he could claim eligibility.

12 80. Additionally, Plaintiff MARTIN is aware of another employee that was fired on her
 13 one-year work anniversary. Plaintiff MARTIN is informed and believed, and thereon alleges, that
 14 Defendants BALL, and Does 1 through 20, inclusive, perceived that other employee as likely to
 15 seek CFRA/FMLA rights.

16 81. Plaintiff MARTIN was discharged and/or subjected to an adverse employment
 17 action because he was disabled and/or because Defendants BALL, and Does 1 through 20,
 18 inclusive, perceived Plaintiff MARTIN as being disabled.

19 82. Plaintiff MARTIN was harmed by such conduct by Defendants BALL, and Does 1
 20 through 20, inclusive.

21 83. The conduct of Defendants BALL, and Does 1 through 20, inclusive, were a
 22 substantial factor in causing MARTIN's harm.

23 84. Plaintiff MARTIN has been harmed in an amount to be proven at trial, in an amount
 24 no less than \$250,000.

25 85. Said conduct by Defendants, and Does 1 through 20, and each of them, was
 26 intentional and despicable, and perpetrated with willful and conscious disregard for Plaintiff's
 27 rights. The described conduct was done with malice, oppression, and/or fraud, in a manner that

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1 renders Defendants, and Does 1 through 20, and each of them, liable for punitive damages in such
 2 sum that shall be determined at the time of trial.

3 **SEVENTH CAUSE OF ACTION**

4 **Violation of Healthy Workplaces, Healthy Families Act of 2014 (HWHFA)**

5 **By Plaintiff MARTIN against Defendants BALL**

6 **and Does 1 through 20, Inclusive**

7 86. Plaintiff MARTIN herein incorporates paragraphs 1 through the instant paragraph.

8 87. Defendants BALL, and Does 1 through 20, inclusive, employed Plaintiff MARTIN
 9 within California.

10 88. Defendants BALL, and Does 1 through 20, inclusive, employed MARTIN without
 11 any applicable Collective Bargaining Agreement as a machinist in Defendants BALL's Fairfield
 12 food-can manufacturing facility, and, accordingly, Defendants BALL, and Does 1 through 20,
 13 inclusive, were not exempt under section 245.5 of the *Labor Code*.

14 89. Defendants BALL implemented an unlawful Sick Leave policy that failed to satisfy
 15 the minimum requirements of California's HWHFA. (*Lab. Code*, § 246(e).)

16 90. Defendants BALL, and Does 1 through 20, inclusive, employed MARTIN, and
 17 similarly-situated employees, in 12-hour shifts.

18 91. Under the sick-leave policy ("The Unlawful Absence Policy") of Defendants BALL,
 19 and Does 1 through 20, inclusive, employees were not allowed to take incremental sick leave
 20 absences. Rather, employees were required to take paid sick leave in unlawfully rigid "blocks" of
 21 paid sick time.

22 92. Plaintiff is informed and believed that absences of 1 minute to 60 minutes were
 23 counted as one point; and absences of 61 minutes to 720 minutes were counted as two points.

24 93. Accruing eleven points within a 12-month period constituted grounds for
 25 termination under The Unlawful Absence Policy.

26 94. Under The Unlawful Absence Policy, points reset to zero annually on the
 27 employee's hire-date anniversary.

1 95. Under The Unlawful Absence Policy, an employee needing less than eight hours
 2 leave for personal sickness and/or family sickness had no option to use two-hour increments of paid
 3 leave. Rather, an employee needing, for instance, three hours leave for personal sickness and/or
 4 family sickness would be deemed to have been absent for the entire shift.

5 96. Under The Unlawful Absence Policy, an employee could not carry sick days over to
 6 the following year. Under The Unlawful Absence Policy, allowable sick time was capped.

7 97. Accordingly, Defendants BALL, and Does 1 through 20, inclusive, were legally
 8 required to provide no less than “24 hours or three days in each year of employment.” (*Lab. Code*,
 9 § 246(d); *id*, § 246(b)(4).)

10 98. Accordingly, Defendants BALL, and Does 1 through 20, inclusive, were legally
 11 required to provide employees with the option of taking sick leaves in increments of no more than
 12 2 hours minimum.

13 99. The Unlawful Absence Policy apparently interprets subdivision (b)(4)/(d)’s
 14 provision for three-day leave as a safeharbor; *i.e.*, the Unlawful Absence Policy apparently views
 15 compliance with subdivision (k)’s provision, which requires employers to authorize leave in
 16 increments no greater than 2 hours, as satisfied if three full days have been provided as paid sick
 17 leave.

18 100. The apparent construction given by Defendants to the HWHFA is absurd on its face,
 19 because if subdivisions (b)(4) & (d) indeed constituted a safeharbor to subdivision (k), then it would
 20 necessarily follow that subdivision (k) only protects employees working shifts **of at least thirteen**
 21 **hours**. For employees working shifts of less than thirteen hours, there would be no need for a two-
 22 hour maximum on increment usage, because, even with a four-hour usage increment, the employee
 23 would still have sufficient time to spread over three days.

24 101. Because it is an absurdity to suppose that subdivision (k) is a protection limited to
 25 workers doing doubletime shifts, it necessarily follows that an employer’s policy furnishing 3 days
 26 paid leave does not, itself, constitute adequate compliance with the HWHFA.

27 102. Rather, a HWHFA-compliant policy must furnish 24 paid hours, spreadable over *as*
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1 *many as twelve days* (i.e., if the employer imposes a two-hour usage increment); except that if the
 2 employee's shift is less than eight hours, the employer does not need to give more than three full
 3 days of sick HWHFA time.

4 103. Defendants BALL, and Does 1 through 20, inclusive, terminated Plaintiff based on
 5 the pretextual basis that Plaintiff had, supposedly, accumulated 10 "points" in a year period, in
 6 addition to the 3 HWHFA days taken by Plaintiff in that period.

7 104. However, Plaintiff had been denied the option of taking HWHFA leave in
 8 increments of less than 12 hours.

9 105. If Plaintiff had been offered the option of taking HWHFA leave in increments of
 10 less than 12 hours, Plaintiff would not have used all his HWHFA time within the twelve-month
 11 period.

12 106. Accordingly, Plaintiff was unlawfully terminated due to Defendants BALL, and
 13 Does 1 through 20, inclusive, and all of them, refusing to allow Plaintiff to utilize statutory HWHFA
 14 leave in increments of two-hours or less.

15 107. Plaintiff's termination was, therefore, a "per se" violation of the HWHFA. (*Lab.*
 16 *Code* § 234.)

17 108. Accordingly, Plaintiff is entitled to bring suit for reinstatement and actual damages.
 18 (*Lab. Code* § 233(e); *id.*, § 248.5(e).)

19 109. Plaintiff MARTIN has been harmed in an amount to be proven at trial, in an amount
 20 no less than \$250,000.

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22 **EIGHTH CAUSE OF ACTION**

23 **TAMENY**

24 **By Plaintiff MARTIN against Defendants BALL**

25 **and Does 1 through 20, Inclusive**

26 110. Plaintiff MARTIN herein incorporates paragraphs 1 through the instant paragraph

27 111. Plaintiff MARTIN was an employee of Defendants BALL and Does 1 through 20,

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1 inclusive.

2 112. On no later than November 28, 2018, Plaintiff MARTIN became eligible to no less
3 than 12 weeks job-protected leave.

4 113. Defendants BALL, and Does 1 through 20, inclusive, knew that Plaintiff MARTIN
5 had a torn rotator cuff, constituting a musculoskeletal physical disability and/or other disability
6 under 2 C.C.R. § 11065(d), and which limited, amongst other limitations, the major life activities
7 of “performing manual tasks,” “reaching,” “lifting,” “bending,” and the “operation of . . .
8 musculoskeletal . . . functions.” 2 C.C.R. § 11065(l).

9 114. Defendants BALL, and Does 1 through 20, believed that Plaintiff MARTIN, being
10 injured, would potentially seek to take CFRA leave, and, for such reason, Defendants BALL, and
11 Does 1 through 20, terminated Plaintiff MARTIN without providing him reasonable
12 accommodations and/or without providing him a reasonable opportunity to challenge his
13 termination and/or through misrepresenting its point policy, so as to preclude MARTIN’s ability to
14 take protected leave.

15 115. The belief by Defendants BALL, and Does 1 through 20, that Plaintiff MARTIN
16 was likely to seek CFRA leave was a substantial motivating reason for Plaintiff MARTIN being
17 discharged and/or subjected to an adverse employment action.

18 116. Plaintiff MARTIN was discharged and/or subjected to an adverse employment
19 action because he was disabled and/or because Defendants BALL, and Does 1 through 20,
20 inclusive, perceived Plaintiff MARTIN as being disabled.

21 117. Additionally, Defendants BALL, and Does 1 through 20, inclusive, terminated
22 Plaintiff based on the pretextual basis that Plaintiff had, supposedly, accumulated 10 “points” in a
23 year period, in addition to the 3 HWHFA days taken by Plaintiff in that period.

24 118. However, Plaintiff had been denied the option of taking HWHFA leave in
25 increments of less than 12 hours.

26 119. If Plaintiff had been offered the option of taking HWHFA leave in increments of
27 less than 12 hours, Plaintiff would not have used all his HWHFA time within the twelve-month

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1 period.

2 120. Accordingly, Plaintiff was unlawfully terminated due to Defendants BALL, and
3 Does 1 through 20, inclusive, and all of them, refusing to allow Plaintiff to utilize statutory HWHFA
4 leave in increments of two-hours or less.

5 121. Plaintiff's termination was, therefore, a "per se" violation of the HWHFA. (*Lab.*
6 *Code* § 234.)

7 122. Plaintiff's termination was a violation of public policy in that Plaintiff's termination
8 violated the public policy of California's sick-time laws, through denying Plaintiff sick time and
9 then terminating Plaintiff on that basis; in that Plaintiff's termination was motivated by an intent to
10 deprive Plaintiff's CFRA rights from vesting and accruing; in that Plaintiff's termination was
11 motivated by an intent to discriminate against Plaintiff due to Plaintiff being disabled and/or being
12 perceived as disabled; in that Plaintiff's termination was motivated by an intent to avoid
13 accommodating Plaintiff's disability; in that Defendants, terminated Plaintiff due to the injury
14 incurred in the Defendants' service, thereby violating fundamental public policy as articulated in
15 *Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658, 661.

16 123. Plaintiff MARTIN was harmed by such conduct by Defendants BALL, and Does 1
17 through 20, inclusive.

18 124. The conduct of Defendants BALL, and Does 1 through 20, inclusive, were a
19 substantial factor in causing MARTIN's harm.

20 125. Plaintiff MARTIN has been harmed in an amount to be proven at trial, in an amount
21 no less than \$250,000.

22 126. Said conduct by Defendants, and Does 1 through 20, and each of them, was
23 intentional and despicable, and perpetrated with willful and conscious disregard for Plaintiff's
24 rights. The described conduct was done with malice, oppression, and/or fraud, in a manner that
25 renders Defendants, and Does 1 through 20, and each of them, liable for punitive damages in such
26 sum that shall be determined at the time of trial.

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NINTH CAUSE OF ACTION

Bus. & Prof. §§ 17200 et seq.

By Plaintiff MARTIN

against Defendants BALL and Does 1 through 20, Inclusive

127. Plaintiff MARTIN herein incorporates paragraphs 1 through the instant paragraph.

6 128. Defendants BALL, and Does 1 through 20, and each of them, have engaged and
7 continue to engage in unfair and/or unlawful business practices in California in violation of
8 *California Business and Professions Code* § 17200 *et seq.*, in committing the various wrongdoings,
9 torts, statutory violations, and unlawful, unfair, and fraudulent business practices herein.

10 129. On information and belief, Defendants BALL, and Does 1 through 20, and each of
11 them, have engaged and continue to engage in unfair and/or unlawful business practices by failing
12 to provide adequate FEHA training and by failing to provide reasonable oversight against unlawful
13 practices within the various Defendants' organizations.

14 130. Defendants BALL, and Does 1 through 20, and each of their, utilization of these
15 unfair and/or unlawful business practices constitutes unfair and/or unlawful competition as such
16 practices have procured Defendants, and Does 1 through 20, and each of them, an unfair advantage
17 over Defendants' competitors who have been and/or are currently employing workers and
18 attempting to do so in honest compliance with applicable laws.

19 131. Defendants BALL utilization of these unfair and/or unlawful business practices
20 constitutes a public nuisance.

21 132. Plaintiff is a victim of Defendant's unfair and/or unlawful conduct alleged herein,
22 and Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore any
23 and all monies withheld, acquired and/or converted by Defendants BALL pursuant to *Business and*
24 *Professions Code* §§ 17203 and 17208. 96.

25 133. Defendants BALL was compelled to retain the services of counsel to file this court
26 action to protect his interests and those of the public, to obtain injunctive relief on behalf of the
27 public, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred

1 the financial burden of attorneys' fees and costs, which he is entitled to recover under section 1021.5
2 of the *Code of Civil Procedure*.

3 **PRAYER FOR RELIEF**

4 Plaintiff RICHARD MARTIN, individually, and on behalf of all other similarly situated,
5 accordingly prays for the following relief against BALL CORPORATION, an Indiana Corporation;
6 BALL METAL BEVERAGE CONTAINER CORP., a Colorado Corporation; and DOES 1 through
7 20, inclusive, as follows:

- 8 (1) For compensatory damages, including back pay, front pay, and/or future earnings,
9 in an amount no less than \$250,000;
- 10 (2) For all special and consequential damages;
- 11 (3) For reinstatement;
- 12 (4) For restitution;
- 13 (5) For punitive damages;
- 14 (6) For all attorneys' fees incurred;
- 15 (7) For all costs of suit;
- 16 (8) For penalties, as authorized by statute;
- 17 (9) For prejudgment and postjudgment interest;
- 18 (10) For injunctive relief;
- 19 (11) For such other and further relief as the Court deems just and proper.

20
21
22 Dated: August 29, 2024

LESCHES LAW

23
24 /s/ Levi Lesches

25 Attorneys for Plaintiff RICHARD MARTIN
26
27
28

— JURY DEMAND —

2 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: August 29, 2024

LESCHES LAW

/s/ Levi Lesches

Attorneys for Plaintiff RICHARD MARTIN